

BRIEF SUMMARY OF CURRENT PILOT PROGRAM

With only two exceptions, all attorneys against whom disciplinary investigations or proceedings are pending (known as “respondents”) are eligible to participate in the State Bar Court’s Pilot Program. The first exclusion from the Pilot Program are those attorneys who have been convicted of criminal offenses that subject them to summary disbarment.¹ These convicted attorneys are not eligible to participate in the Pilot Program because disbarment is required for those offenses, without a hearing and irrespective of the existence of mitigating circumstances.

Secondly, every attorney who wishes to participate in the State Bar Court’s Pilot Program must first be accepted into and agree to participate in the Lawyer Assistance Program (“LAP”). An attorney who is not accepted into the LAP cannot participate in the Pilot Program. Only those attorneys who successfully complete the LAP are entitled to a dismissal of the charges or a reduction in discipline. (Bus. & Prof. Code, § 6233.)

There are three stages of involvement in the State Bar Court’s Pilot Program: (1) the referral stage; (2) the evaluation stage; and (3) the full program participation stage.

A respondent may be identified as a potential participant in the Pilot Program at any time, including during the Office of the Chief Trial Counsel’s disciplinary investigation, at the time of the Early Neutral Evaluation conference or after formal disciplinary charges have been filed in the State Bar Court. (See rule 801, Rules Proc. of State Bar.) The “referral stage” commences when the attorney is first identified as a potential participant in the Pilot Program. Either the Office of the Chief Trial Counsel or the respondent may ask the assigned State Bar Court judge for a referral to the Pilot Program or the assigned judge may make the referral on his or her own motion. A status conference is then scheduled before the Pilot Program Judge, who explains the Pilot Program to the respondent and inquires whether he or she is willing to be referred to the LAP for purposes of evaluation.

If he or she is interested in pursuing possible participation in LAP and the Pilot Program, the Pilot Program Judge refers the respondent to the LAP for an evaluation of the substance abuse or mental health issue. This is the “evaluation stage” of the proceeding. LAP’s evaluation of the respondent typically takes about 90 days to complete. As part of its evaluation, LAP also develops a treatment plan. If the attorney desires to participate in the LAP, he or she must sign a long-term participation agreement with LAP following the completion of the evaluation and development of the treatment plan. During this stage, the respondent and the Office of the Chief Trial Counsel work on reaching agreement on a stipulation as to facts and conclusions of law. The respondent must also establish that there is a nexus between the underlying allegations of misconduct and his or her substance abuse or mental health issue. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *Hippard v. State Bar*

¹ An attorney may be summarily disbarred following a final conviction of an offense which is a felony under the laws of California, the United States or any state or territory of the United States and “an element of the offense is the specific intent to deceive, defraud, steal or make or suborn a false statement or involved moral turpitude.” (Bus. & Prof. Code, § 6102, subd. (c).)

(1990) 50 Cal.3d 358, 367; *Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Lamb* (1990) 49 Cal.3d 239, 246.)

Once the LAP evaluation has been concluded, the parties have reached agreement on a stipulation as to facts and conclusions of law and the respondent has established the nexus between his or her misconduct and the substance abuse or mental health issue, the Pilot Program Judge issues a Decision Re: Alternate Recommendations for Degree of Discipline. (Rule 803(a), Rules Proc. of State Bar.) In this Decision, the Pilot Program Judge sets forth the disposition or discipline that will be imposed or recommended if the attorney successfully completes the Pilot Program and, alternatively, the discipline that will be imposed or recommended if the attorney agrees to participate in the Pilot Program but subsequently fails to successfully complete the Pilot Program.

After the Pilot Program Judge's Decision has been issued, the respondent decides whether or not to participate in the Pilot Program. If the attorney decides not to participate in the Program, the stipulation as to facts and conclusions of law and the Decision Re: Alternate Recommendations for Degree of Discipline are vacated and the disciplinary proceeding is returned to the originally-assigned judge for normal case processing.

On the other hand, if the respondent decides to participate in the Pilot Program, he or she must sign a Pilot Program Contract, in which the attorney agrees to comply with the participation conditions established by the Pilot Program Judge.² Once the respondent signs the Pilot Program Contract, the "full program participation stage" of the process commences. During this stage, the Pilot Program Judge holds periodic status conferences to ascertain whether the respondent is complying with the terms of the Pilot Program Contract and his or her long-term participation agreement with LAP. In order to successfully complete the Pilot Program, the respondent must be in the Pilot Program for a period of three years, although that period may be shortened to a minimum period of 18 months through earned incentive credits based upon the quality and extent of the respondent's compliance with LAP and Pilot Program conditions. In order to successfully complete the Pilot Program, the respondent must be substance free for a period of at least one year or, for attorneys with mental health issues, the Pilot Program Judge must approve the completion of the program based upon a recommendation from a mental health professional.

During the "full program participation stage" of the proceeding, the stipulation as to facts and conclusions of law and the Pilot Program Judge's Decision are merely lodged with the State Bar Court. Neither of these documents are filed until the respondent either successfully completes the Pilot Program or is terminated from the Program. However, upon the occurrence of either of these events, the stipulation and Decision are filed and the appropriate disposition or discipline is either imposed or transmitted as a recommendation to the Supreme Court.

While the fact that a disciplinary proceeding is pending against an attorney in the Pilot Program is public and the various filed pleadings and orders in the case are available to the

² The Pilot Program Contract may, among other things, require the attorney to make restitution to his or her clients or the Client Security Fund or to perform other acts.

public (Bus. & Prof. Code, § 6086.1), all medical and treatment information regarding the attorney is confidential (Bus. & Prof. Code, § 6234; rule 805). Additionally, documents that are merely “lodged” with the Court are not subject to public review.

As of April 30, 2004, there are 78 attorneys who have either been accepted into the Pilot Program or are seeking to participate in the Pilot Program. These attorneys account for 142 separate disciplinary cases.